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125 Years of Law Books, 1888-2013

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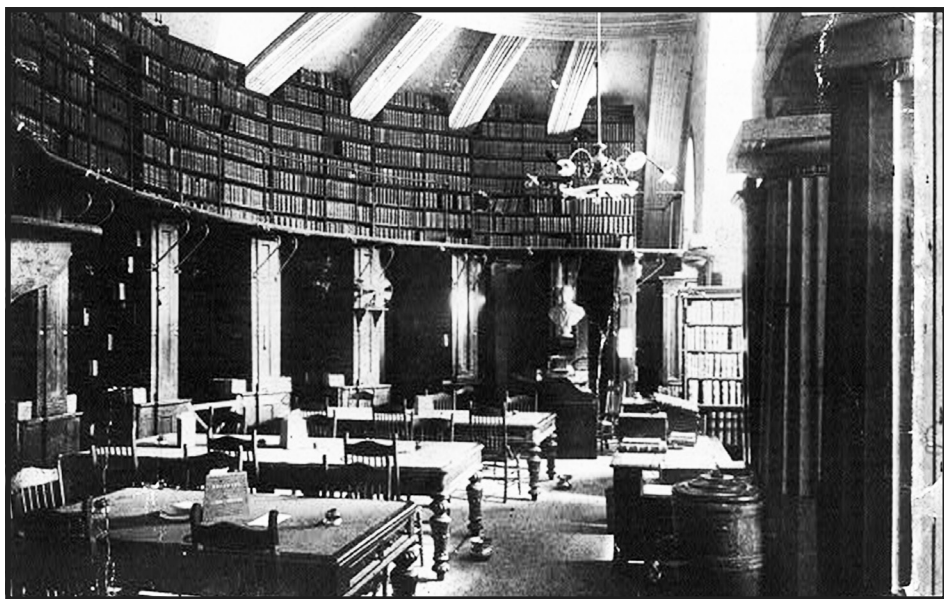


Photo of Law Library of the Library of Congress in the U.S. Capitol, c. 1895, Library of Congress.

125 YEARS OF LAW BOOKS, 1888–2013

Keith Ann Stiverson

*To attain a competent knowledge of the common law . . .
requires steady perseverance, in consequence of the number of
books which beset and encumber the path of the student.*

—James Kent

James Kent wrote those words in 1826, decrying the fact that more than 600 volumes of English and American case reports and treatises had been published, but not many of them were helpful to the student seeking an understanding of the common law. “Steady perseverance,” to Chancellor Kent, meant setting aside more books than were consulted, to take control of the “indigestible heap of . . . legal authorities.”

The early classes at Chicago-Kent College of Law were taught in judges’ chambers or in law offices, where the library usually belonged to the instructor. Students were often free to use the books, and sometimes could borrow them for short periods of time. The trouble was, everyone needed the same books. The problem was underscored when Dean Langdell’s case method became the dominant means of instruction. Many volumes of case reports had to

be replaced year after year, because the pages where the assigned cases appeared were simply thumbed to death by students: the casebook was born of necessity as much as convenience.

The nineteenth century law schools that merged to become Chicago-Kent College of Law had very small collections of books, but students had access to both the city's public library (founded in 1872) and the Newberry Library, a humanities research collection open to the public that was established in 1887. The only Chicago law library of any size was the Chicago Law Institute Library, which was incorporated by a small group of lawyers in 1857 to serve the needs of the city's growing legal community. The collection consisted of approximately 7,000 volumes and was housed in the Cook County Courthouse, where judges, government employees, and law students were permitted to use the collection at no charge, while local practitioners paid an annual fee of \$100. The Law Institute collection eventually served as the basis for the Cook County Law Library, which is now estimated to have more than 300,000 volumes.

Law book publishing in the nineteenth century was initially based in Albany, New York City, Philadelphia, and Boston, but Chicago also had a share of the industry, including E.B. Myers & Co., a book store/office for Lawyers Co-operative

Publishing Company of New York, and the Illinois Book Exchange, which provided student textbooks. The most famous law book store of all was "Callaghan's Three Miles of Law Books" at 68 West Washington Street, which eventually became "Miles and Miles of Law Books" in later advertisements when its stock was replaced after the Great Chicago Fire of 1871. Law books were often distributed through the publishers' own book stores, but Callaghan sold books from many publishers.

It was in the 1880s that American law publishers began to create order out of the "indigestible heap" of law books that was growing very fast as the nation and commerce developed. By then, case reports had been published in the United States for approximately 100 years, but not in a systematic way until West's National Reporter System began in 1879 with the Northwestern Reporter. West was the company that established a real system for publishing cases, and then followed that innovation with the American Digest System. Soon after the Northwestern Reporter began, West took over and improved the *U.S. Digest*, which was previously published by Little, Brown. West's digests and Key Number System enabled lawyers to find what they needed in the rapidly-growing sets of West reporters. The company then answered the needs of lawyers who could not afford (and did not want) the entire national system when it

began publishing state digests and reporters.

As West was inventing a system to grapple with the burgeoning case law, Frank Shepard was inventing the case citator. Shepard's Citations began in 1873 as a service in which adhesive labels were sent to subscribers who affixed them to the pages of published case reports so that the lawyer reading the case could determine whether the court's decision in the case was still "good law" or had been overturned on appeal. Eventually Shepard developed a complicated system of abbreviations to indicate the importance and validity of the case so that a reader knew if the case could be cited as authority for the statement he wanted to make. The awkward method of updating (the gummed labels often dried up and fell off the pages) didn't work very well, so Shepard began publishing his updating system in bound volumes keyed to the various reporters and updated by paperback supplements. The lawyer who needed to determine the history or current status of a case he was reading could simply check by citation. Finally, in the 1980s, the Shepard's Citations system became the extremely current online citator that lawyers use today.

One response to the proliferation of cases was the birth of selective case reporters with so-called annotations, i.e., an explanation that put the case(s) in context and provided a

narrative to explain the development of a particular area of law. It was simply impossible for most lawyers to keep up with the massive number of court opinions being published, so the idea of highlighting and explaining only the leading cases had real merit. The earliest of the annotated cases, in the 1880s, were accompanied by short notes; later on, editors wrote hundreds of pages to explain the development and current state of an area of law in multiple jurisdictions.

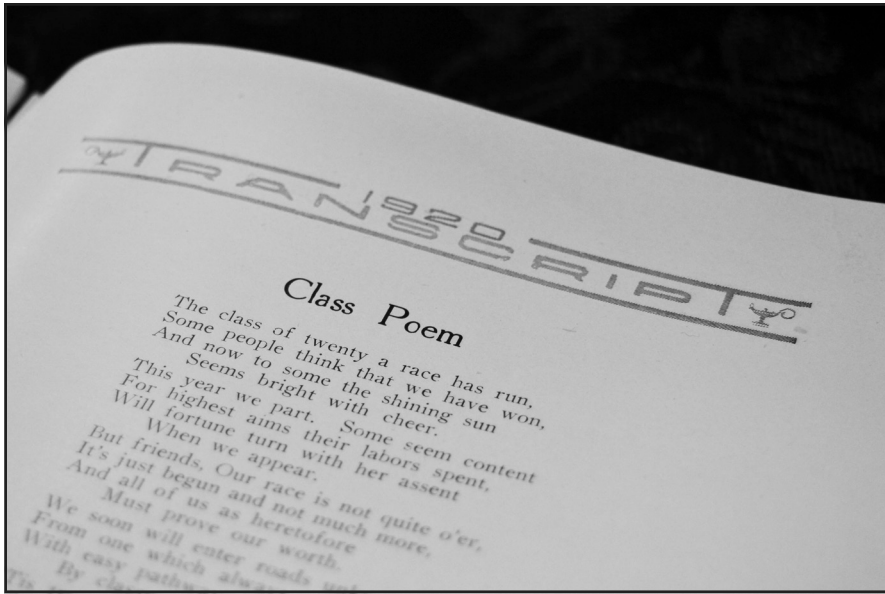
Another innovation that came from the law book publishers soon after the turn of the century was the specialized loose-leaf service. The first successful one was published by Commerce Clearing House in 1913 after ratification of the Sixteenth Amendment created the income tax. Soon there were other services covering such subjects as trade regulation and banking, then additional areas of law as more publishers entered the field. The most useful of the loose-leaf services brought together in one publication all of the things that a practitioner needed: court opinions, rulings, statutes and regulations, as well as secondary commentary. Many of the services were updated weekly, so the lawyer had less reason to worry that the information he had was out of date. In the 1980s, many lawyers who specialized in a particular area of law welcomed the new CD-ROM format, which made it easy for them to carry around their entire law library.

Judges were not the only busy writers; legislatures, both state and federal, began to pass more laws to deal with the demands of an increasingly complex industrial society. Session laws were often published only at the end of a session of the legislature; these, along with the occasional statutory digest and the various indexes, were not sufficient to make the material available in a timely manner. It was increasingly difficult to piece together the original statute with all of the amendments of later years. *The Revised Statutes of 1873* was a temporary solution to the problem, but it was 1926 before the first publication of the *United States Code*. The Code finally gave lawyers access to federal law in a topical arrangement that was updated. The official Code is republished every six years; the most recent edition consists of more than 200,000 pages. West began publishing an unofficial version of the Code right away, in 1927, called the *United States Code Annotated*. As everyone knows who has done research in federal statutes, West did a faster, better job than the government of publishing the supplementation necessary to keep the Code up to date. Many states also began to compile their statutes into a topical arrangement with an extensive index. Some of these compilations provided citations to cases or short annotations of the court decisions that had construed each section of the statute.

No law library could afford to collect all of the official statutes and court opinions of Federal and state governments, let alone the commercial versions of primary material. The huge wave of secondary legal publications that appeared in response to the New Deal and the eventual specialization of the legal profession made it impossible to build a truly comprehensive collection. The 600 volumes of case reports that once annoyed Chancellor Kent continued to multiply until it eventually became the behemoth that also included thousands of law reviews and legal newspapers. Luckily, the technology we needed and the uniform system of legal citation made it possible to control this enormous mass of material, and to simplify the many elaborate systems that had been created to help the practitioner find the law by subject.

The 1970s and 1980s were decades of real achievement in making the whole body of law and the many secondary sources more readily available in convenient form. The Lexis database was followed eventually by Westlaw, and the two systems have dominated the market for online legal research ever since, despite weak challenges from smaller publishers and from the open access movement. The recent entry of Bloomberg Law/BNAL into the online market is the first real challenge to the supremacy of Lexis and Westlaw.

A collection of historical books



Class poem from *The Transcript*, 1920, Chicago-Kent's student yearbook, photo by Emily Barney.

named *The Making of Modern Law* (MOML) was an important contribution to law collections several years ago that helped to level the field for new academic law libraries that had few of the older books. MOML is a digital collection of more than twenty thousand nineteenth and early twentieth century treatises and other legal documents that are accessible through Chicago-Kent Library's online catalog. As one flips through the pages of this electronic book collection, it is somewhat surprising to realize that quite often one is looking at images of a print work that was once prized by our nineteenth century faculty and students. An example is Thayer's *A Preliminary Treatise on Evidence at the Common Law*, published at the turn of the last century and later added to our library's print

collection as the 10,510th volume, a work that is still available on a shelf in the library, but also accessible as a full-text e-book that can be read 24/7 by clicking a hyperlink.

Now that our huge collections of print volumes are disappearing from shelves, what will happen next to the academic law book collections that took more than a century to acquire? One can probably predict more offsite storage, more e-books, and more use of print-on-demand options. What was once known as "collection development" in the library has undergone radical change. Acquisition is often temporary, and research materials are not automatically added to the library's permanent collection.

Many law libraries are returning to their roots to make the historical materials of their law schools available. For instance, Chicago-Kent Library is starting a project to preserve the law school's unique historical collections by placing them in a digital repository. The images will reside in the cloud, rather than molding away, page by page, in a dark room. The institutional repository will be the permanent home for (among other things) the early publications and videos of and about the law school. We will be able to tell the descendant of a 1915 graduate where to find the online class photograph that includes his great-grandfather. The nephew of a woman who was the class poet many years ago can now read her work online, because we saved an old student yearbook before it disintegrated.

Today's law student may finish her legal education and then go into the practice of law without ever using a print volume, given the twenty-first century reality that online databases usually contain everything she needs

for research, and client files are often in an electronic knowledge management system rather than in a print file. But if she returns for a law school class reunion in a few years, hoping to re-live her triumph at a law student talent show, we hope we'll have a link to the video. ♦

Sources and Further Reading

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Keith Ann Stiverson is the Director of the Library at Chicago-Kent. She received her law degree from Georgetown University Law Center and her M.S. in Library Science from Catholic University. Keith Ann was engaged in private practice (municipal bonds) for several years in Cincinnati before leaving to take a position as Special Assistant to the Law Librarian at the Library of Congress. She came to Chicago-Kent in 2001 from the University of Texas at Austin, where she served as Associate Director of the Law Library.